



Order under Section 78(11) Residential Tenancies Act, 2006

Citation: Wan v Paulino, 2024 ONLTB 21801

Date: 2024-03-27

File Number: LTB-L-098575-23-SA

In the matter of: 401 TRAVISS DR
NEWMARKET ON L3Y7J7

Between: Lei Wan Landlord

And

Elisa Jovina Chahin de Paulino Tenants
Marcos Antonio Paulino

Lei Wan (the 'Landlord') applied for an order to terminate the tenancy and evict Elisa Jovina Chahin de Paulino and Marcos Antonio Paulino (the 'Tenants') because the Tenants did not meet a condition specified in the order issued by the LTB on June 28, 2023 with respect to application LTB-L-051726-22.

The Landlord's application was resolved by order LTB-L-098575-23, issued on June 28, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-098575-23.

This motion was heard by videoconference on March 14, 2024.

The Landlord's Legal Representative, Rong Wei You, and the Tenant, Marcos Antonio Paulino, attended the hearing. The Tenant confirmed he has the authority to speak on behalf of the other Tenant.

Determinations:

1. The Landlord filed an application because the Tenants did not pay the rent in full and on the day it is due. This application was resolved by way of a Board issued on May 10, 2023, which required the Tenants to pay the lawful monthly rent in full and on time.
2. The order provided that the Landlord could apply to the Board under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenants to terminate the tenancy and evict the Tenants if they did not meet the conditions specified in the order.
3. There is no dispute that the Tenants breached the order by failing to pay the December rent on or before December 5, 2023.

4. This motion is brought pursuant to subsection 78(11) of the Act. As the Tenant acknowledges breaching the order, the only issue before me is whether or not I am “satisfied, having regard to all the circumstances, that it would not be unfair to set aside the order”.

Whether to Set Aside the Order

5. As I am satisfied that the Tenants breached the Board order, the next step in the legal analysis is to consider whether it would be unfair in all the circumstances to set aside the eviction order.
6. In the Tenants’ motion, the Tenant wrote that they are seeking to set aside the order in an effort to be provided with more time to find alternative housing.
7. In his testimony, the Tenant stated they have lived in the house since September 2021 and they have two small children. They would like to remain in the house but in the alternative, the Tenant requested they be afforded more time to find a new home.
8. He stated he is self-employed and his spouse is employed part-time. He stated that due to fluctuations in his income, they have been unable to fulfill their obligations to pay the rent in full and on time. Going forward, he made a commitment to the Landlord to pay the rent when it is due as he is expecting financial assistance from his spouse’s family which will allow them to pay the rent in advance of its due date. The Tenant added the monthly rent due for March 2024 would be paid to the Landlord on March 15, 2024.
9. The Landlord’s representative submitted that the Landlord previously accommodated the Tenants by allowing them to pay the monthly rent on the 5th day of each month during the period of the conditional order. He submitted the Tenants are always late paying the rent even with the extended date and the Tenants have received enough chances to comply with the conditional order. He added the Tenants have provided no evidence to support the claim that financial assistance is forthcoming and the Landlord is seeking that the Tenants’ motion be denied.
10. The Landlord’s representative undertook to advise the Board if the Tenants’ payment for the March rent is made on March 15, 2024. I note, the Board did not receive such notification from the Landlord’s representative however the Tenant did provide the Board with a copy of his e-transfer to the Landlord, in the amount of \$3,902.00, made on March 14, 2024. According to this post-hearing submission, the Landlord need only accept the e-transfer.
11. Based on the evidence and submissions before me, I am satisfied on a balance of probabilities that the tenancy should continue. I find that this is an appropriate case for me to exercise my discretion under subsection 78(11)(b) of the Act to set aside the eviction order and give the Tenants one final opportunity to attempt to save this tenancy and preserve stable housing for their family. I make this decision in light of balancing the prejudice to the Landlord against the serious consequences to the Tenants and their children if the motion fails.

12. Under the circumstances as stated, I believe it is appropriate for me to exercise my discretion under subsection 78(12) of the Act to amend order LTB-L-051726-22, issued on June 28, 2023.
13. In light of the foregoing, the Tenants' motion will be granted, subject to the amendments to the conditional order set out below.

It is ordered that:

1. The motion to set aside Order LTB-L-098575-23, issued on January 12, 2024, is granted.
2. Order LTB-L-098575-23, issued on January 12, 2024, is set aside and cannot be enforced.
3. Order LTB-L-051726-23, issued on June 28, 2023, is cancelled and replaced with the following.
4. The Tenants shall pay the lawful monthly rent in full and on the 5th day of each month thereafter for the period of April 2024 up to and including June 5, 2024.
5. The Tenants shall pay the lawful monthly rent in full and on the 1st day of each month thereafter for the period of July 1, 2024 up to and including March 1, 2025.
6. If the Tenants fail to comply with the conditions set out in paragraphs 4 and 5 above, then, within 30 days of the breach, the Landlord may apply under section 78 of the Act for an order terminating the tenancy and evicting the Tenants. The Landlord must make the application within 30 days of a breach of a condition set out in paragraphs 4 and 5 of this order.

March 27, 2024
Date Issued

Susan Priest
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.